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**Poland:**

Country Report

**Stanislaw GEBETHNER**

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## ABSTRACT

In Poland during the Second Republic (1918-1939) there was performed no referendum and the both constitutions: of 1921 and of 1935 did not mention the institution of referendum. After the World War Two for the first time in the history of Poland the referendum was performed in 1946. This referendum initiated by the communist party (the Polish Workers' Party) and its allies was an excuse for delaying the first post-war parliamentary elections. The second all-national referendum was held in 1987 on a decline of the communist era. This referendum in fact anticipated (or even accelerated) the collapse of the regime of real socialism (or communist domination). So, we may say that the irony of history is that the communist regime - being imposed from abroad was installed and consolidated in Poland also through means of the forged referendum of 1946 – after the forty years collapsed also in long run consequences of the referendum of 1987, but this time fairly conducted popular voting.

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## Direct democracy: country-report on Poland

**Stanislaw Gebethner<sup>1</sup>**

### 1. Historical introduction

In Poland during the Second Republic (1918-1939) there was performed no referendum and the both constitutions: of 1921 and of 1935 did not mention the institution of referendum.

After the World War Two for the first time in the history of Poland the referendum was performed in 1946. This referendum initiated by the communist party (the Polish Workers' Party) and its allies was an excuse for delaying the first post-war parliamentary elections. The aims of that referendum were twofold - to legitimize the communist take-over the power in this country and to eliminate the anti-communist opposition (especially the Polish Peasant Party). It was rather plebiscite than referendum. However - what is the most important - the results of this referendum were forged.

The second all-national referendum was held in 1987 on a decline of the communist era. This referendum in fact anticipated (or even accelerated) the collapse of the regime of real socialism (or communist domination). Although the subject matter of this referendum were two (formulated rather in complicated manner) questions concerning the democratization of political system and market-oriented economic reforms, in practice that was above all a plebiscite for or against the then exiting regime. This time the officially published results were fair. The turn-out in this referendum was 67% what was at that time interpreted as an evident defeat of the ruling Polish United Workers' Party (PUWP) because one third of the eligible voters obeyed the appeal of the underground „Solidarity” to boycott this referendum. At the same time reform-oriented wing within the PUWP (including general W. Jaruzelski) suffered a serious setback. True enough, the majority of citizens who took part in the popular voting approved both proposed ideas of political democratization and economic reforms, but this majority constituted respectively 46.3% and 44.3% of eligible voters. However, according to the Law on referendum then being in force the outcomes of the popular voting were binding if the overall majority of eligible voters will accept proposals submitted to the referendum. In political terms general W. Jaruzelski (then the leader of PUWP) recognized the results of referendum as a public vote of non-confidence and was looking for a new political solution which conducted in 1989 to the Round-Table negotiations with the anti-systemic opposition represented by the Solidarity. In these negotiations was reached the agreement on the peaceful and gradual transition from communist regime to democratic one.

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So, we may say that the irony of history is that the communist regime - being imposed from abroad was installed and consolidated in Poland also through means of the forged referendum of 1946 - after the forty years collapsed also in long run consequences of the referendum of 1987, but this time fairly conducted popular voting.

From the institutional point of view the referendum of November 29, 1987 meant significant change in history of the Polish constitutional law. The institution of referendum was for the first time introduced to the Polish constitution. On May 6, 1987 the new section was added to the article 2 of the Constitution of the Polish People's Republic. It stipulated that „The state power shall exercise by the working people who its will may articulate also by means of a referendum. The principles and the procedure of holding a referendum shall be established by law.”

On the same day (i.e. on May 6, 1987) the Law on civic consultation and referendum was adopted by the Sejm.

After the two amendments introduced in December 1989 and in March 1990 to the Constitution of 1952 the article 2 stipulated: „1. Supreme powers in the Republic of Poland shall be vested in the Nation. 2. The Nation shall exercise its power through its representatives elected to the Sejm and to the Senate. The exercise of such power may also be implemented by means of a referendum. The principles and the methods of holding a referendum shall be established by law.”

On April 23, 1992 was adopted the Constitutional Act on the procedure for preparing and adopting a constitution of the Republic of Poland. In the article 1 of this Constitutional Act it was enacted that „A Constitution of the Republic of Poland passed by the Sejm and Senate jointly convened as the National Assembly shall be adopted by the Nation in a constitutional referendum.” In another words the institution of mandatory constitutional referendum had been established in the Polish constitutional law. The Constitutional Act of April 23rd, 1992 was then amended in 1994. This time an optional constitutional referendum had been added. The new article 2c stipulated that „The principles on which the constitution shall be based, may be submitted to referendum.”

Later on in the Constitutional Act of 17th October, 1992 on the Mutual Relations between the Legislative and Executive Powers of the Republic of Poland and on Local Self-government developed the constitutional regulations on all-national referendum. According to the article 19 of this Constitutional Act a referendum could be held on matters of particular significance for the state. The right to order a referendum was vested in the Sejm as well as in the President of Republic acting with the consent of the Senate. These constitutional provisions continued in force until the new Constitution of 1997 came into force on October 17, 1997.

On June 29, 1995 the old Law of 1987 on civic consultation and referendum was replaced by the new the Law on referendum, which is nowadays still in force.

A local referendum was for the first time upgraded to the constitutional institution in the Constitutional Act of 17th October, 1992 mentioned above. The article 72 section 2 of this



Constitutional Act stipulated that „The inhabitants may take decisions by means of a local referendum. The requirements and procedure of holding a local referendum shall be established by law.”

Earlier the local referendum has been regulated by the Law of March 8, 1990 on local government in commune and by the Law of October 11, 1991 on communal referendum. These two Laws - with some minor amendments - are nowadays still in force.

So, we may say that in Poland during one decade - from 1987 to 1997 - the constitutional and ordinary legislations concernig the referendum developed gradually and eventually have been confirmed in the Constitution of Republic of Poland of 2nd April, 1997.

## 2. Subject-matters of popular votes

According to the present Constitution of Republic of Poland we may distiguish three types of popular votes:

- 1) the constitutional referendum,
- 2) the all-national referendum, and
- 3) the local referendum

The Constitution of Republic of Poland had been adopted by the National Assebley on April 2, 1997 and then was ratified in national referendum which took place on May 25, 1997. This Constitution is also providing the referendum as an element of the procedure of amending the Constitution.

The law changing the Constitution shall be accepted by the both chambers of parliament: by the Sejm (i.e. the main chamber) by the majority of 2/3 in presence of the half of deputies and by the Senate (i.e the second chamber) by the overall majority in presence of the half of senators. When the constitutional amendment deals with the provisions of the chapters I, II and XII of the Constitution the President of Republic, the Senate or 1/5 of deputies can demand that the law changing the Constitution shall be submitted on national referendum. In popular vote the constitutional amendment should be accepted by the majority of citizens participating in the referendum.

The chapter one of the Constitution is dealing with the fundamental principles of the system of government, of the political system as well as of the economic system. The chapter two of the Constitution is dealing with the fundamental human and citizens' freedoms and rights, when chapter thirteen provides rules of amending the Constitution.

In other words we may say that **the subject-matters of an optional (but not mandatory) constitutional referendum which can be ordered in Poland are the principal institution of the system of government as well as the fundaments of the political and economic systems and the fundamental human and citizens' freedoms and rights.**

According to the article 125 of the Constitution of 1997 **the all-national referendum may be performed on matters of particular significance for the state.**

The similar provisions (article 19) concerning the all-national referendum were enacted in the temporary Constitutional Act of October 17, 1992 and it was in fact repeated in the Constitution of 1997. The institution of referendum, however, was for the first time introduced to the Polish constitutional law under previous regime - in 1987. The details are regulated in the Law of June 25, 1995 on referendum. According to this Law some subject-matters (i.e. amnesty, national defence as well as public revenues and expenditures) are interdicted when the all-national referendum was initiated by citizens.

There is no legal definition what means an issue being significant matter for the interest of state. This political decision. However, it is clear that by means of an all-national referendum can not be adopted law because this is the constitutional competence reserved only to the parliament.

According to the article 90 section 3 of the Constitution an international treaty, by virtue of which the Republic of Poland delegates to an international organization or international institution the competence of organs of state authority in respect to certain matters may be ratified by means of an all-national referendum. Therefore, the matter which may be in future submitted to referendum is the ratification of a treaty on Poland's access to the European Union. According to the article 90 of the Constitution of 1997 such international treaty can be ratified by the both chambers of parliament by the qualified majority of two third or in all-national referendum. In this case the all-national referendum is exceptionally an alternative to legislative decision-making process and that is the Sejm which will decide which way of ratification of treaty is chosen.

Although there is no legal obstacles to initiate referendum on any matter the most of proposals which since 1990 had been submitted to the Sejm were eventually rejected by the Sejm of different reasons and in various circumstances.

The all-national referendum can not be held during martial law, a state of emergency or a state of calamity as well as within 90 days since a given extraordinary state was lifted.

The main matters being in the past decade proposed as the subject of the all-national referendum concerned: an abortion law, a restitution of the property, an electoral system, a structure of the parliament (i.e. powers of the second chamber). The only successful initiative was the referendum on universal privatization (socialization) of the state property - the referendum which was held in February 1996.

**The local referendum on matters having respect to local community** - including the recall of an elected assemblies of self-government - may be performed according to the article 170 of the Constitution of 1997.

Such concept of local referendum have been introduced to the Polish legal order in 1990 and is regulated by the Law of March 8, 1990 on communal self-government and by the Law of October 11,

1991 on communal referendum as well as by the Law of June 5, 1998 on local government in county and the Law of June 5, 1998 on local government in voivodeship.

We have to explain that in 1990 the genuine local self-government was established in Poland only at the primary level, i.e. in the communes and in the municipalities. In 1999 has been restituted the three tiers territorial division of the country and local and/or regional self-government was established on county and voivodeship (provincial) level. In consequences the two new Laws were adopted on June 5, 1998: on self-government in county and on self-government in voivodeship. In these two new Laws were also enacted regulations on a county referendum and on a voivodeship referendum to some extent similar to the provisions adopted earlier in 1990 in Law on communal self-government. Till now there are not yet adopted, however, the Laws on county referendum and on voivodeship referendum.

According to the article 11 of the Law of 1990 on communal self-government the residents - as members of local community - are taking decisions in public voting (elections and referendum) or through elected organs of commune. So, the election of communal council as well as the referendum are treated by law as an equal form of a direct participation in decision-making process in local community. Only in a communal referendum can be decided on a residents' self-imposed taxation for public aims. Also only through a communal referendum can be recalled a communal council. A local referendum may be also held on any other matter being significant for communal community.

In the judicature of the Supreme Court and of the High Administrative Court a matter being submitted to communal referendum should be within the scope of competences of communal authorities and its outcomes should not infringe the law.

According to the article 10 of the Law of 1998 on self-government in the county only through local referendum a county council may be recalled. To a referendum may be submitted any other matter being within the scope of competences of the county authorities.

In a case of the regional (voivodeship) referendum the present statutory regulations are rather ambiguous. In the article 17 of the Law of 1990 on self-government in the voivodeship only a referendum on recall of voivodeship assembly is mentioned. It is difficult to say what was the legislators' intentions - why they limited a scope of regional referendum only to a procedure of recall of voivodeship assembly. Maybe the expected future detailed legislation on regional (voivodeship) referendum will bring an answer in this point.

### 3. Techniques and procedures for popular votes

The referendum on the Law amending the Constitution (i.e a constitutional referendum) may be initiated by the President of Republic, by the Senate or by the 1/5 of deputies. A motion for holding the constitutional referendum should be submitted within 45 days since the Law amending the Constitution was passed in the Senate. The referendum must be performed within 60 days since a

motion for its holding was submitted. The Law amending the Constitution should be accepted by the majority of eligible voters participating in the referendum. No quorum is needed.

The all-national referendum may be ordered by the Sejm which shall decide on this matter by a overall majority in presence of at least half of the constitutional number of deputies or by the President of Republic with the consent of the Senate passed by a overall majority in presence of at least half of the constitutional number of senators. In the both cases this is rather high threshold, especially when no political party has clear majority in a given chamber of parliament. According to the Constitution (article 125) the final decision is made by the Sejm or by the President of Republic in cooperation with the Senate. However, according to the Law of June 25, 1995 on referendum a popular voting may be initiated by citizens. Proponents of a referendum must collect a support of at least 500 000 eligible voters, but the final decision is vested in the Sejm. An amnesty, matters concerned the national defence as well as public revenues and expenditures can not be a subject of the all-national referendum initiated by citizens.

The result of an all-national referendum is binding when more than a half of eligible voters have taken part in popular voting.

The validity of the both - a constitutional and an all-national - referendum should be confirmed by the Supreme Court.

A local referendum in a commune may be ordered by the communal council on its own initiative or on a demand of one tenth of residents eligible to vote. A referendum on a recall of the communal council can be held only on demand of residents eligible to vote. Such demand can not be submitted in a first 12 months after the election or in 12 months after previous referendum on this matter.

A local referendum performed on a demand of residents may be initiated by an individual citizen or a group of citizens as well as by a local organization of political party or other civic organization functioning in a given commune. A residents' demand for referendum must be accepted by the communal council. The decision should be taken within 30 days since the regular motion was submitted by the required number of residents. If the communal council had rejected a residents' demand for holding a referendum, proponents of such popular voting may appeal to the administrative court. The court decision is final.

A residents' demand for holding referendum on a recall of the communal council is submitted to the voivodeship electoral commissioner. If the voivodeship electoral commissioner had rejected a residents' demand for holding a referendum on a recall of the communal council, proponents of such referendum may appeal to the administrative court, which verdict is final.

Any local referendum is valid when at least 30% of eligible voters have taken part in communal popular voting.

Similar principles concerning a local referendum in the county have been adopted in the article 11 of the Law of 1998 on self-government in the county. However, detailed regulations dealing with a procedure of initiating and holding a popular votes in the county were not passed by the parliament.

In contrary to local referendum performed in communes and in counties nowadays (i.e. in 1999) still lacks any statutory regulations concerning both the principles and the procedure for holding regional referendum in the voievodeship. Therefore, the article 17 of the Law of 1990 on self-government in the voievodeship proclaiming a possibility to recall of voievodeship assembly through referendum is up today a void declaration.

#### 4. Plebiscites and referendums.

The difference between the plebiscite and the referendum is not clear. However, we may say that the referendum means a reference to a particular political question to the electorate for a direct decision by popular vote and the plebiscite means the submission an issue to a popular vote by which the people concerned express an opinion for or against a proposal, especial on choice of government ruler.

Taking into account this theoretical distinction one may say that in Poland the referendum on recall of the communal council, county council or voievodeship assembly should be treated as a plebiscite.

Sometimes, however, from the formal point of view a popular vote is the referendum (i.e. being a reference to a particular political, or even technical, question), but in reality it becomes the plebiscite in which the electorate express an opinion „for” or „against”. In Poland that was the case of the referendum in 1987 when two questions submitted to popular vote concerned the detailed issues of democratization of the political system and the market-oriented economic reforms, but in fact it became the plebiscite for or against then existing system of govermnet and for or against then ruling the Polish United Workers’ Party.

Also the referendum on the Constitution of the Republic of Poland which took place on May 25, 1997.

The referendum on the Constitution was, just like the Constitution itself, an object of a sharp conflict between the opponents of the Constitution and the political parties which voted for this Constitution in the National Assembly. Politicians from the opposition demanded that, in addition to the Constitution adopted by the National Assembly, the Solidarity's draft of the constitution, proposed in 1994 as the popular initiative (the so-called citizens' draft of the Constitution), should also be subject of voting in the referendum.

For this purpose, a proposal was submitted for a change of the Constitutional Act on the Procedure for Preparing and Adopting the Constitution of the Republic of Poland. The proponents of the change wanted to put to vote in the referendum both the Constitution adopted by the National Assembly and

the Solidarity's draft of the constitution. On March 6, 1997 the Sejm rejected this proposal by an overwhelming majority (357 against, to 36 in favour of the change). From the formal point of view, the Sejm's decision put an end to the efforts on the part of the opposition outside of parliament to hold a referendum in which two drafts of the constitution would be put to a popular vote. This was because the Constitutional Act of 1992 on the procedure of preparation and adoption of the Constitution of the Republic of Poland granted the exclusive authorisation to enact a constitution to the National Assembly.

The proponents of holding a referendum on two drafts of the constitution quoted public opinion polls, which indicated that half of those sociological surveys were in favour of choosing between many drafts of the constitution. Such preferences on the part of the general public were understandable. As the authors of the Centre for Research on Public Opinion report correctly wrote that "the preferences in regard to choice between two drafts result first of all from the desire to retain the highest possible degree of civic subjecthood, and less from the intent of submitting to vote one or another draft of the constitution.". In the previous polls, conducted in 1994, 1995, and 1996, the respondents preferred a preliminary, partial referendum on concrete constitutional issues. Their reaction to a referendum confirming the entire constitution was not favourable.

It can be said that between 1993 and 1997 the balance of power in the electorate did not undergo any significant change. It would be difficult to point to any crucial shift of power strengthening the position of the opposition functioning outside of parliament. However, in 1997 it became better organised.

The opposition groupings outside of parliament which opposed to the Constitution adopted by the National Assembly demanded also a change in the rules for holding a referendum on the Constitution, especially as regards the conditions under which the results of a referendum were recognised as binding. They wanted it to be recognised that for the results of a referendum to be binding, at least half of the entitled voters must participate in the referendum. After the failure of the efforts to change the Constitutional Act of April 23, 1992, which specified the conditions for holding a national referendum on a constitution adopted by the National Assembly, the opposition outside of parliament began to work on invalidating the referendum of May 25th 1997.

Thus, the politicians opposing the Constitution addressed a protest to the Supreme Court against the validity of the referendum. The protesters claimed that the outcome of the referendum was not binding because only 42,86% of eligible voters participated in it. According to the authors of the protest, article 19 section 3 of the Constitutional Act of October 17th 1992, i.e. of the provisional constitution, had superior legal force over article 11 section 1 of the Constitutional Act of April 23 1992 on the Procedure for Preparing and Adopting of the Constitution of the Republic of Poland. The latter Act, referring to a referendum on the constitution, stipulates: "A constitution is adopted in a referendum if the majority of those participating in the referendum voted for the constitution." At the

same time, article 19 section 2 of the provisional constitution, concerning an ordinary referendum, stipulates: "If more than half of the entitled voters participated in the referendum, then the result of the referendum is binding."

The politicians who lodged the protest argued that article 11 of the Constitutional Act of April 23, 1992 was incompatible with article 19 of the Constitutional Act of October 17, 1992, and according to them, the latter Act was more important. They demanded that the Constitutional Tribunal take a decision on the matter.

The President of the Constitutional Tribunal declared that the Tribunal cannot consider the matter since it is not authorised to examine constitutional acts and the relationship between them. Nevertheless, he admitted that in his opinion 50% participation in popular vote should be required also in the case of a referendum on the constitution. He made it clear, however, that this was a problem of the law-maker's rationality and not a question on which the Tribunal could pronounce.

It is difficult to accept the implication of irrationality on the part of the Polish law-makers. Both of the 1992 Constitutional Acts, the one from April 23rd and the one from October 17th, are constitutional acts of equal legal force. Neither one of them is superior to the other. Moreover, these two Constitutional Acts contain regulations concerning two different kinds of referendum. Therefore, the difference in the criteria determining binding results is fully rational.

The all-national referendum provided for in the provisional constitution of 1992 (and regulated in a similar way in the new Constitution of 1997) is an example of direct democracy, supplementing the basic method in which the nation exercises a public power through its representatives. In an ordinary all-national referendum the people can express its opinion on a particular question. When in a given case the majority of voters support a particular solution, and more than half of the eligible voters participate in the voting, then the outcome of the referendum binds the legislative body and other organs of the State. In other words, the qualified majority of citizens gives binding instructions to their representatives. And it is understandable that when such instructions are given, there should be a sensible threshold of participation which will sanction them as the will of the significant majority of voters. Otherwise, a small minority could impose its wishes on the majority. The will of the majority expressed in the ordinary referendum only initiates certain actions on the part of the representatives of the people.

A referendum on the Constitution works differently, however. The National Assembly was elected for a particular purpose, with the general task of adopting the Constitution; and the referendum was held in order to verify the final text of such an Act. Therefore, a referendum on the constitution was held in order to ratify a constitution adopted by the National Assembly. The National Assembly acted as the Constitutional Assembly, which by the will of the nation, the sovereign ruler, through a democratic election, is vested with the constitution-making power.

The Supreme Court, or more precisely, the Bench for Administrative Law, Labour Law, and Social Security, rejected the above-mentioned protests of the politicians opposing the Constitution by passing a resolution confirming the validity of the referendum on the Constitution. The Supreme Court correctly distinguished between a referendum on the constitution and an ordinary all-national referendum provided by the provisional constitution. Although not explicitly the Supreme Court followed on line of theoretical distinction between the referendum and plebiscite.

## 5. Forms of government and referendum.

In Poland there is no long-standing tradition of holding referendums. As it was mentioned above the constitutional acknowledgement of popular vote as a form of direct democracy took place in 1987. The form of government established in Poland after the World War One was based on principles of indirect democracy. And even if the article 4 section 2 of the present Constitution stipulates that „The Nation shall exercise power through its representatives or directly”, the main form of government is the representative democracy - implemented through elected chambers of the parliament (i.e the Sejm and the Senate) as well as by the President of the Republic elected in universal suffrage.

The present system of government in Poland remains as a rationalized parliamentary based on the strengthened position of the Prime Minister and his Cabinet, as well as on an active role of the President of Republic, separately legitimized by universal and direct election. While elected representation is the major form of exercise of the Nation's sovereignty, the both forms of direct democracy - the referendum and citizens' legislative initiative - being recognized in the Constitution of 1997 are auxiliary ones.

## 6. Participation and turnout

Broadly speaking in Poland in the passing decade the participation in public voting - i.e. in national and local elections as well as in national and local referendums - is rather low. This statement is proved by following figures.

Turnout in national elections and referendums in 1990-1998

### A. In presidential elections

	1st round	2nd round
1990	60.6%	54.4%
1995	64.7%	68.2%



**B. In parliamentary elections**

1991	42.2%
1993	52.1%
1997	47.9%

**C. In local elections**

1990	40.3% - 44.4%
1994	27.8% - 38.2%
1998	39.8% - 49.5%

**D. In regional elections (of voievodeship assemblies)**

1998	45,3%
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**E. In referendum on national level**

on privatization in	1996	32.4%
on the Constitution in	1997	42.9%

At the local (i.e. communal) level in the past 9 years had been conducted nearly one hundred referendums on recall of a communal council. But only in 9 cases the turnout was over 30% and referendums were valid and in consequences local councils had been recalled.

In the other local referendums the 30% threshold were not overcome in the most cases. There are only a dozen of local referendums in which this threshold had been overcome and the results of popular voting were valid and binding.

Generally speaking it is easier to initiate a local referendum than to achieve successful outcomes of such popular voting, i.e. to meet the requirement of at least 30% participation of entitled voters what is necessary that the referendum to be valid and its results to be valid.

**7. Influence of political parties, movements and other pressure groups on direct democracy**

In Poland politicians are rather suspicious to the referendum and other forms of direct democracy. However, political parties being in the opposition or civic movements being not represented in parliament are undertaking attempts to initiate referendum as instrument of a pressure on political parties being actually in power. Frankly speaking very often an initiative to appeal to citizens for support the idea to hold referendum on a given matter are treated by party leaders as a form of consolidation and/or mobilisation of their constituency having in mind the forthcoming parliamentary elections.

At the local level political parties in Poland are not sufficiently developed and well rooted in the local communities. Therefore, in the overwhelming majority of cases local referendums are initiated by spontaneous groups of citizens which in effect are not able to achieve their goals in popular votes

#### 8. Polish experiences

Polish experiences with referendum can not be univocally evaluated. On the one hand it must be underlined that in the past decade the institutional and constitutional arrangements have been developed and open the way for implementation of this form of direct democracy. On the other hand the civil society in Poland is not yet developed at the satisfactory level. The both - national and local - referendum are not used properly as form of mobilisation of citizens to direct participation in decision-making process in public life.